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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JUDITH FLORES,

Defendant and Appellant.

2d Crim. No. B262106
(Super. Ct. No. 1430377)
(Santa Barbara County)

Judith Flores appeals following her no contest plea to possession of cocaine (Health & Saf. Code, § 11350, subd. (a)). The trial court reduced the charge to a misdemeanor pursuant to Proposition 47 and sentenced appellant to six months in county jail with credit for time served. Appellant asks us to review the sealed record of the in camera proceedings held in accordance with *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), on her motions to quash and traverse the warrant and suppress the evidence obtained against her. She also contends that her motions to quash and suppress evidence were erroneously denied because the warrant was not supported by probable cause. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 6, 2013, the Santa Barbara Police Department executed a search warrant for four residential addresses in Santa Barbara. Three of the addresses, including

the single family residence located at 335 West Anapamu Street, were identified as the residences of 19-year-old David Ybarra, Jr. Appellant and Ybarra Jr.'s father, David Ybarra, Sr. (Ybarra Sr.), lived at 335 West Anapamu and were present when the search was conducted. When the officers entered, appellant was lying next to bindles of heroin and cocaine and appeared to be under the influence of drugs. Appellant and Ybarra Sr. were both arrested and subsequently charged with three violations of Health and Safety Code section 11350.

Prior to the preliminary hearing, appellant and Ybarra Sr. moved to unseal the search warrant affidavit, quash and traverse the warrant, and suppress the evidence. After conducting an in camera *Hobbs* hearing, the magistrate ordered that two redacted pages of the search warrant affidavit be unsealed and released to appellant and Ybarra Sr. The magistrate also found, however, that the sealed affidavit established probable cause for the warrant.

The unsealed portions of the affidavit state that the police had been conducting an investigation into the Eastside criminal street gang and its members, including Ybarra Jr. During its four-month investigation, the police had observed Ybarra Jr. at three different residences. Within 10 days prior to the warrant being issued, the police had contacted Ybarra Jr. at his father's residence at 335 West Anapamu. Ybarra Jr. had answered the door to the residence and his pregnant girlfriend was also present. Moreover, Ybarra Jr. had recently reported to the Department of Motor Vehicles (DMV) that 335 Anapamu was his "other address."

On other occasions, Ybarra Jr. had "been observed coming and going from" Apartment K at 710 Garden Street. Ybarra Jr.'s grandmother lived in Apartment K and Ybarra Jr. had reported this as his address to the DMV. On numerous other occasions, Ybarra Jr. was seen coming and going from Apartment A at 511 East Anapamu Street. Ybarra Jr. also frequently stayed the night there along with his girlfriend and had referred to it as his "house" in a text message to this mother.

After further briefing, the magistrate affirmed his prior findings and accordingly denied appellant and Ybarra Sr.'s motions. After an information was filed, appellant and Ybarra Sr. filed motions to suppress under Penal Code¹ sections 995, subdivision (a)(2)(B), and 1538.5, subdivision (i). After considering the parties' briefs, "the transcript, and the original search warrant affidavit," the court found that the magistrate had not erred in issuing the warrant and accordingly denied the motion to suppress.

DISCUSSION

Appellant seeks our review of the *Hobbs* proceedings and contends the evidence against her should have been suppressed as the result of a warrant issued without probable cause. Having reviewed the sealed record, we conclude that the court fully complied with *Hobbs* and correctly ordered that only part of the search warrant affidavit be unsealed. The court also properly found that the affidavit did not contain false or misleading statements and provided probable cause for issuance of the warrant.

A defendant may move to suppress evidence obtained as the result of a search warrant on the ground there was no probable cause for the issuance of the warrant. (§ 1538.5, subd. (a)(1)(B)(iii).) If the defendant moves to quash the search warrant, "the court should proceed to determine whether, under the 'totality of the circumstances' presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was 'a fair probability' that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.]" (*Hobbs, supra*, 7 Cal.4th at p. 975.)

Pursuant to *Hobbs*, "[o]n a properly noticed motion by the defense seeking to quash or traverse [a] search warrant" where any part of the search warrant affidavit has been sealed, "the lower court should conduct an in camera hearing It must first be determined whether sufficient grounds exist for maintaining the confidentiality of the

¹ All statutory references are to the Penal Code unless otherwise stated.

informant's identity. It should then be determined whether the entirety of the affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant's identity." (*Hobbs, supra*, 7 Cal.4th at p. 972.) "If the affidavit is found to have been properly sealed, and the defendant has moved to traverse the warrant, the court should then proceed to determine whether the defendant's general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit" (*Id.* at p. 974.) "If the trial court determines that the materials . . . before it do not support defendant's charges of material misrepresentation, the court should simply report this conclusion to the defendant and enter an order denying the motion to traverse. [Citations.]" (*Ibid.*)

We independently review the court's decision to unseal only a portion of the search warrant affidavit. (See *People v. Martinez* (2005) 132 Cal.App.4th 233, 241-242.) The standard of review that otherwise applies in this context is not well-settled. Because appellant's sole purpose in attacking the search warrant is to suppress the evidence obtained during the search, we shall utilize the same standard of review that applies to the court's denial of her suppression motion. Under that standard, we "must uphold the trial court's express or implied findings of fact if the facts are supported by substantial evidence. However, we use our independent judgment to determine whether those facts establish probable cause." (*People v. Mikesell* (1996) 46 Cal.App.4th 1711 (*Mikesell*), 1716; *People v. Leyba* (1981) 29 Cal.3d 591, 597.)

Based upon our review of the transcripts of the in camera proceedings, we conclude the court did not err in refusing to unseal the entire search warrant affidavit or in determining which portions had to remain under seal in order to maintain the confidentiality of an ongoing investigation. The court also properly found that the affidavit did not contain any material misrepresentations or omissions of fact.

We also agree with the court's finding that the affidavit provided probable cause for issuance of the warrant. Appellant claims that the information disclosed in the unsealed version of the affidavit does not establish probable cause. The court, however,

based its finding on the *sealed* affidavit, which contains additional information that is relevant to the inquiry.

In any event, we agree with the People that the unsealed portion of the affidavit also establishes probable cause for the search. In determining whether probable cause exists, "[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1040-1041.) "A reviewing court will consider the totality of the circumstances to determine whether the information contained in an affidavit supporting the application for a warrant establishes a fair probability that a place contains contraband or evidence of a crime. [Citation.] Doubtful or marginal cases are to be resolved by the preference to be accorded to warrants. [Citation.]" (*Mikesell, supra*, 46 Cal.App.4th at p. 1716.)

Appellant does not claim the police lacked probable cause to believe that Ybarra Jr. had committed crimes or that evidence of those crimes might be found at his residence. He contends, however, that there was no such cause to believe Ybarra Jr. had more than one residence because the affidavit indicated he "had his own apartment at 511 East Anapamu Street, at which the police observed him on a large number of occasions." But the affidavit also stated that appellant had been seen at his father's residence at 335 West Anapamu along with his girlfriend, had answered the door when the police contacted him there, and had reported it as his "other address" to the DMV. As the People persuasively note, "it is not unusual for young adults of that age to live part time at a parent's home or visit family members' homes often." Nor would it be unusual for a person in Ybarra Jr.'s position to hide evidence of his crimes in places other than his primary residence. His connection to his father's residence, which he himself defined as his "other address," rendered it fairly probable that a search of the property would lead to

the discovery of such evidence. Appellant's claim that the warrant was not supported by probable cause accordingly fails.²

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

² In light of our conclusion, we need not address the People's alternative contention that the evidence was admissible on the ground that the search was conducted in good faith. (See *United States v. Leon* (1984) 468 U.S. 897, 900.)

Brian E. Hill, Judge

Superior Court County of Santa Barbara

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